

F. M. TULLY

IBLA 78-543

Decided January 29, 1979

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting in part regular noncompetitive oil and gas lease offer U-39952.

Affirmed.

1. Withdrawals and Reservations: Effect of--Withdrawals and Reservations:
Revocation and Restoration

Lands which are withdrawn from entry remain withdrawn and are not open under the public land laws until there is formal revocation or modification of order of withdrawal and a restoration order opening the lands. Mere passage of time or accomplishment of avowed purpose cannot serve as substitute for formal revocation and restoration.

2. Bureau of Land Management--Federal Employees and Officers: Authority to Bind Government--Oil and Gas Leases: Lands subject to--Withdrawals and Reservations:
Effect of--Withdrawals and Reservations: Revocation and Restoration

Erroneous issuance by BLM of oil and gas lease on other withdrawn land in area of tract for which appellant submitted lease offer does not effect restoration to leasing of latter withdrawn tract.

APPEARANCES: F. M. Tully, Denver, Colorado, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

F. M. Tully appeals from a June 26, 1978, decision of the Utah State Office, Bureau of Land Management (BLM), rejecting in part his

regular noncompetitive oil and gas lease offer U-39952 for certain public domain lands situated in T. 4 S., R. 23 E., Salt Lake meridian, in Uintah County, Utah. See 43 CFR Part 3110. The area which Tully was denied and with respect to which he appeals is the W 1/2 of section 9.

The State Office gave the following rationale for its action:

In accordance with regulation 43 CFR 2091.2-5(a), the records of this office indicate that the lands described in the W 1/2 Sec. 9, T. 4S., R. 23 E., SLM, Utah, are withdrawn from all forms of appropriation under the Public Land Laws, including the mining and mineral leasing laws. Accordingly, the segregative effect of the withdrawal still exists, until official notice is given.

The lands in issue were withdrawn by President Roosevelt in Proclamation No. 2290 (July 14, 1938), 3 CFR 36 (1938-1943 Compilation), acting pursuant to the authority granted him in section 2 of the Act of June 8, 1906, 34 Stat. 225, 16 U.S.C. § 431 (1970). The purpose was to enlarge the Dinosaur National Monument, which had been created earlier. By the Act of September 8, 1960, P.L. 86-729, 74 Stat. 857, the Congress revised the boundaries of the Dinosaur National Monument, but did not include within those boundaries the lands in issue in this appeal.

Appellant contends:

The final action on the application for withdrawal in this case was taken by the Congress and President of the United States by the enactment of Public Law 86-729, approved September 8, 1960. Said W 1/2 of Section 9, having been temporarily segregated, was thus restored, and official notice thereof given, by said Public Law.

* * * * * * *

It is further noted that Section 26, T.3 S., R. 24E., SLM, has been in a status similar to that of said W 1/2 of Section 9, having been subject to the same temporary segregation and subsequent elimination from the Dinosaur National Monument by Public Law 86-729. Your office has, however, in the case of said Section 26, issued oil and gas leases on separate occasions, U-30962 now being in effect.

Appellant also discusses the meaning of 43 CFR 2091.2-5(a) and (b), which were cited in the State Office decision. Such provisions of

the regulations are not material to this proceeding, however, because they apply only to proposals for withdrawal submitted under 43 CFR Part 2350. The lands in question here were actually withdrawn in 1938, so the regulations governing the segregative effect of applications for withdrawal are not applicable.

The first issue for decision is whether the lands involved have been restored to entry and appropriation, particularly to leasing under the Mineral Leasing Act, as amended, 30 U.S.C. § 181 et seq. (1976).

[1] The 1960 Act includes no express revocation of the 1938 withdrawal. In a series of public land orders the Department has touched upon lands pertinent to the Dinosaur National Monument, viz., PLO 5204, 37 FR 7206 (April 12, 1972); PLO 5333, 38 FR 7558 (March 23, 1973); PLO 5424, 39 FR 24901 (July 8, 1974); PLO 5475, 40 FR 6341 (February 11, 1975). However, the executive branch has never taken formal action to revoke the 1938 withdrawal, and to restore the land to the operation of the public land laws, including the mineral leasing laws. We adhere to the rule, which is stated below:

[T]he consistent position of this Department has been that lands which are withdrawn from entry under some or all of the public land laws remain so withdrawn until there is a formal revocation or modification of the order of withdrawal. The mere passage of time or the accomplishment of an avowed purpose cannot serve as a substitute for the formal restoration, * * *.

Tenneco Oil Company, 8 IBLA 282, 283-84 (1972). See John C. Amonson, 8 IBLA 346 (1972); Rowe M. Bolton, 5 IBLA 226 (1972); Oliver and Robert A. Reese, 4 IBLA 261 (1972). Until the lands are restored to entry, they are not open to leasing, regardless of what effect the 1960 Act has. Accordingly, we find the lands in issue are not open to leasing, and BLM properly rejected appellant's noncompetitive oil and gas lease offer for these lands. Cf. City of Phoenix, 14 IBLA 315, 81 I.D. 65 (1974).

[2] We now consider appellant's second argument – that the Department has issued a lease on lands in section 26 of T. 3 S., R. 24 E., which have been in a status identical to that of the lands in issue. In a July 19, 1978, letter, BLM conceded that:

The lands in Sec. 26, T. 3 S., R. 24 E., SLM, Utah in oil and gas lease U-30962 may have been issued in error. Appropriate action to cancel this lease in part will not be taken at this time, but will await a formal ruling from the Board, should you desire to pursue an appeal under U-39952.

The Board thus discussed the same argument in Tenneco Oil Company, *supra*, at 284:

[T]enneco contends that the Department has, in its own actions, treated the land as restored. Admittedly, the Department has, in the past, issued two oil and gas permits and two oil and gas leases for the subject tract. * * * This we believe to have been error. But we cannot let a desire for consistency in action blind us to the errors of past practice. It is enough that at this point in time we recognize former mistakes in the treatment of the subject land and act accordingly. In any event, appellant has suffered no prejudice from this past practice and it is well settled that reliance upon erroneous advice of Departmental employees, or incorrect records maintained by the state offices cannot create a right where none would otherwise exist. [Footnote omitted.]

We hold that the erroneous issuance by BLM of an oil and gas lease on other withdrawn lands in the area of the tract for which appellant submitted a lease offer does not effect a restoration to leasing of the latter withdrawn tract. Thus, appellant's offer must be rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur.

Joan B. Thompson
Administrative Judge

Edward W. Stuebing
Administrative Judge

